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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/334,978	06/17/1999	JOHN C. WEBBER	1365-012C	5936
8698	7590	08/13/2008	EXAMINER	
STANLEY LAW GROUP LLP			PASS, NATALIE	
495 METRO PLACE SOUTH				
SUITE 210			ART UNIT	PAPER NUMBER
DUBLIN, OH 43017			3626	
			MAIL DATE	DELIVERY MODE
			08/13/2008	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN C. WEBBER and GREGORY S. GERARD

Appeal 2007-3172
Application 09/334,978
Technology Center 3600

Decided: August 13, 2008

Before HUBERT C. LORIN, ANTON W. FETTING, and JOSEPH A.
FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 11, 13-26. Claims 1-9 were cancelled by Appellants by instruction in its Appeal Brief at 2. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a method and system which relates generally to real time information updated in a data base (Specification 1:3-5).

Claim 18, reproduced below, is representative of the subject matter on appeal.

18. A method for obtaining real time product information comprising the steps of:
 - establishing a first network connection between a first merchant computer and a network host computer;
 - transmitting product information from said first merchant computer to said network host computer;
 - establishing a second network connection between a second merchant computer and said network host computer;
 - transmitting product information from said second merchant computer to said network host computer;
 - storing said product information from said first merchant computer and said second merchant computer in a database;
 - establishing a connection between said network host computer and a customer computer;
 - receiving from said customer computer a search request for product information from said database, said search request comprising at least one search parameter for searching said database;
 - searching said database using said search parameter to select product information relevant to said search request;

assimilating said product information selected using said search parameter to distinguish said product information from said first merchant computer from said product information from said second merchant computer in response to said search request from said customer computer for product information from said database;

transmitting said assimilated product information to said customer computer;

displaying said assimilated product information at said customer computer;
and

transmitting from said network host computer to said customer computer continuous updates to said assimilated product information at said customer computer wherein said continuous updates are assimilated and transmitted by said network host computer if

1) said customer computer has requested continuous updates to assimilated product information related to said search parameter in said search request for product information;

2) said network host computer determines said first merchant computer or said second merchant computer has transmitted updates to said product information in said database related to said search parameter in said search request for product information.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Shavit	US 4,799,156	Jan. 17, 1989
King	US 5,319,542	Jun. 7, 1994
Filepp	US 5,347,632	Sep. 13, 1994
Hill	US 5,528,490	Jun. 18, 1996
Atcheson	US 5,583,763	Dec. 10, 1996

Suzuki

US 5,715,448

Feb. 3, 1998

The following rejection is before us for review:

1. Claims 11, 13, 18-19, 21 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki in view of Shavit, King, and further in view of Hill.

ISSUE

The issue is whether Appellants have sustained their burden of showing that the Examiner erred in rejecting the claims on appeal as being unpatentable under 35 U.S.C. § 103(a) over Suzuki in view of Shavit, King, and further in view of Hill.

FINDINGS OF FACT

1. Suzuki discloses a plurality of computers interconnected to one another by a host computer network of

...a data service company 50 [which] is distributed among a plurality of apparel manufacturers (A, B, C, . . .) 10, a plurality of textile companies (A, B, C, . . .) 20, a plurality of sewing companies (A, B, C, . . .) 30, and a plurality of sales companies (A, B, C, . . .) 40, thereby a data offering service network is expanded.

In the data service company 50, there is provided a host computer (integrated database managing system) 52, which is connected to the apparel manufacturers 10, the textile companies 20, sewing companies 30, and sales companies 40 through a public telephone line by use of modems 51A, 51B, 51C, and 51D. An integrated database (DB) 53 to be detailed later, and a work station

level terminal 54 including a keyboard, a high resolution display, and a printer, are connected to the host computer 52. Also, a scanner 55 is connected to the terminal 54.

Each apparel manufacturer 10 has a data terminal 12 connected to the host computer 52 of the data service company 50 by a modem 11. The terminal 12 is a work station level terminal including a keyboard, a high resolution display, and a printer. For example, as shown in FIG. 2, goods data is displayed on a display screen 13 by characters, and image data of a textile can be displayed thereon. Also, a superimposing process can be performed so as to match a design of a dress prepared by a design CAD.

Each textile company 20 plans the textile and instructs the production of the textile. Then, similar to the apparel manufacturers 10, in the textile company 20, there is provided a terminal 22, which is connected to the host computer 52 of the data service company 50 through the public telephone line by use of a modem 21A. In the terminal 22, the superimposing process cannot be performed unlike the terminal 12 of the apparel company 10, however, a change of a design of the textile, and the preparation of the textile can be performed.

Moreover, each textile company 20 has production company groups (A, B, C, . . .) 60, as their subsidiary companies, including a textile dying company 61, a yarn company 62, a weaving company 63, a textile raw material company 64, which are connected to each textile company 20 through the public telephone line by use of a modem 21B, and actually carry out the production of the textiles. The respective companies 61, 62, 63, 64 have modems 611, 621, 631, 641 and terminals 612, 622, 632, 642. The textile

companies 20 transmit instruction of production to these production companies online, whereby a real production is carried out. In the figure, one company of each type of the production companies 61 to 64 is typically shown. However, in actual, each type of the production companies 61 to 64 often includes a plurality of companies.

Similarly, there is provided a terminal 32, which is connected to the host computer 52 of the data service company 50 through the public telephone line by use of a modem 31 in each of sewing companies 30. Also, there is provided a terminal 42, which is connected to the host computer 52 of the data service company 50 through the public telephone line by use of a modem 41A in each of sales companies 40. Moreover, each sales company 40 has shops 70, which actually sell dresses, as a subsidiary. Each shop also has a modem 71 and a terminal 70, so that sales can be transmitted to the sales company online. In other words, in this case, the terminal 72 of each shop 70 has a POS terminal function.

(Suzuki, col. 4, ll. 6-67.)

2. The data service 50 collects and transmits product information which includes “[s]ales result of self-company: a transaction result counted at real time...” (Suzuki, col. 5, ll. 31-32).

3. Suzuki discloses transmitting from the network host computer 52 to a customer computer (apparel manufacturer 10 or the textile company 20) whereby:

[i]f the operation is a retrieval mode (step S11), the host computer 52 retrieves the integrated database DB 53 in accordance with the retrieval condition in response to the request from the

apparel manufacturer 10 or the textile company 20 (step S12), and the result is transmitted to each company.... If all registration processings are finished (step S13), the operation returns to step S2, and a next command analysis is carried out.

(Suzuki, col. 8, ll. 59-67.)

4. In addition to transmitting real time production instructions, the host computer also

[a]t the time of retrieval, [transmits] goods data of the textile, which satisfies the retrieval condition, business transaction data (by which the state of sales can be confirmed), and the image of the textile as required can be seen through the terminal 12 of the apparel manufacturer 10 and the terminal 22 of the textile company 20.

(Suzuki, col. 9, ll. 1-6.)

5. Suzuki discloses an integrated database 53 of the data service company 50 available for obtaining the above-mentioned services FF 1,2,3,4) comprises a production data DB 531, a plan data DB 532, an apparel DB 533, a textile DB 534, a transaction DB 535, a management support DB 536, and a work DB 537. The parsing of data as between these databases by subject content effectively assimilates data into categories for retrieval by a customer computer later in time. (Suzuki, col. 6, ll. 15-76, col. 7, ll. 1-67, and col. 8, ll. 1-46.)

6. Shavit discloses

[t]o provide the various services to subscribers and other users the system 50 maintains a local data base which may include a complete data base for individual subscribers as

well as a partial data base of a subscriber. The service available to users can be accessed in a variety of operational modes which are characterized by the location of the computing logic, the location of the data base, and the communications mode... Alternatively, the systems may be shared in which case part of the user's data base is maintained at the system 50 processing center and part is maintained at the subscriber's computing center. Communication modes may be either interactive involving a continuous flow of transactions in both directions or batch involving periodic transfer of information or transactions in one direction at a time.

(Shavit, col. 7, ll. 23-46.)

7. The Merriam-Webster definition of update is: “*v.* to bring up to date. *n.* current information for updating something” (<http://www.merriam-webster.com/dictionary/update>).

8. Hill discloses

[t]he constant data updating step illustratively includes the steps of determining updated portions of the constant, data stored in the main computer that are different than the constant data stored in the remote computer, transmitting the updated portions of the constant data stored in the main computer from the main computer to the remote computer, and replacing portions of the constant data stored on the remote computer with the updated portions of constant data received from the main computer.

(Hill, col. 3, l. 63 to col. 4, l. 5.)

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004).

Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham*, 383 U.S.

at 12 (emphasis added)), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

The Supreme Court stated that there are “[t]hree cases decided after *Graham* [that] illustrate the application of this doctrine.” *Id.* at 1739. “In *United States v. Adams*, … [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *Id.* at 1739-40. “*Sakraida and Anderson’s-Black Rock* are illustrative – a court must ask whether the improvement is more than the predictable use of prior art elements according to their established function.” *Id.* at 1740.

The Supreme Court stated that “[f]ollowing these principles may be more difficult in other cases than it is here because the claimed subject

matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement.” *Id.* The Court explained:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

Id. at 1740-41. The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”

ANALYSIS

For the reasons that follow, we sustain the Examiner’s rejection of independent claims 11, 18, and 21. Appellants’ arguments likewise fail to demonstrate error in the rejection of dependent claims 13-17, 19, 20, and 22-

26¹, which Appellants have not argued separately from claims 1, 18, and 21, respectively. As such, we sustain the rejection of claims 11, and 13-26.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this opinion. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See 37 C.F.R. § 41.37(c)(1)(vii) (2007).*

Appellants' arguments against the rejection of each of independent claims 11, 18, and 21 are based on perceived deficiencies of Suzuki, Shavit and Hill. Inasmuch as Appellants raise the same issues with respect to each of these claims, we discuss these three claims together, addressing each of Appellants' arguments teach in turn.

The Suzuki Reference

Appellants argue that Suzuki discloses

a "retrieval mode" operation in which a host computer retrieves information from a database in response to a request from a merchant user and returns the requested information to the user. The information flows from the host computer to the merchant user at the merchant user's request. A passage related to a transmission of information from one computer to another does not teach

¹ Dependent claims 14, 15, 22, and 23 were rejected under 35 U.S.C. § 103(a) using the same references applied to independent claims 11, 18, and 21 with the addition of Atcheson, and dependent claims 16, 17, 20, 24, and 25 were rejected under 35 U.S.C. § 103(a) using the same references applied to independent claims 11, 18, and 21 with the addition of Filepp. Thus, these dependent claims rise and fall with the independent claim on which each depends. (*See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987)).

transmitting updates to product information. There is no teaching or even a suggestion in this passage that any particular type of information is transmitted and more importantly, that updated product information is transmitted. Prior art teachings related generally to the transmission of product information from one computer to another computer do not relate transmissions of updated product information.

(Appeal Br. 11.) We disagree with Appellants. Contrary to Appellants' assertions that no "...particular type of information is being transmitted" in Suzuki, Suzuki distinctly discloses that the retrieved information is, e.g., "goods data of the textile, which satisfies the retrieval condition, business transaction data (by which the state of sales can be confirmed), and the image of the textile...." (FF 4.) As such, specific product information as required by the claims is being transmitted from the host computer to a merchant computer at the merchant user's request.

Appellants further argue that Suzuki's disclosure in column 5, lines 31-32 stating "'sales result of self-company: a transaction result counted at real time' does not teach updates to product information transmitted from a merchant computer to a host computer which is what the claim requires."

(Appeal Br. 11.) We do not agree with Appellants. First, we find that Suzuki does disclose updates to product information in the form of real time sales results (FF 2), goods data (FF 4), and production instructions (FF 1). Further, we find that Suzuki discloses a data service 50 which has a host computer connected to plural other computers (FF 1) and in one mode of operation, the data service 50 collects data on production and sales results in real time (FF 2) from each of these computers, and then stores same in each

of several databases assimilated by topic as shown in Figure 4. (FF 5.)

Appellants argue that the real time sales disclosed by Suzuki in column 5, lines 31-32 does not constitute updates to product information. We disagree. First, Appellants do not point us to any definition in the Specification, nor do we find any, such that the claim term “updates” is to be accorded a meaning different from its ordinary and customary meaning. The ordinary meaning of updating in the context of the claimed invention is “current information” (FF 7). Thus, the real time sales information (FF 2) and production goals of product all constitute product information which is current because this information is collected in real time as opposed to being delayed. The service 50 in Suzuki is thus read as updating the database 531 to include the new data obtained in real time. Since the sales data is collected at the integrated database 531 in real time and hence is updated data, and when it is retrieved (FF 4) pursuant to a request from another user, it is transmitted from the host computer to the requesting user, it thus meets the requirements of the claims.

The Shavit Reference

Appellants argue that Shavit fail to disclose “...1) searching a database for updated product information relevant to a search request and 2) continuous updates to product information relevant to a search request.” (Appeal Br. 12.) However, as found *supra*, Suzuki discloses searching the integrated database 53 via a retrieval mode, which database includes updated information. Thus, any argument to the shortcomings of Suzuki as to this feature carries little, if any weight because updated product information identified in item 1) and as discussed *supra*, is met by Suzuki. With regard to the item 2) *supra* directed to the limitation of continuous updates to

product information, the Examiner found and we agree that Shavit discloses continuous flow of transactions recorded into a database (FF 6). We have also found that the information in Suzuki is updated information, which by definition, would need to be continuous in order to be real time data (FF 2). Even still, a person with ordinary skill in the art person would know from Shavit to continuously maintain a flow of product information between the host computer database 53 and the networked computers in Suzuki in order to maintain efficiency in the production system (FF 1).

The Hill Reference

Appellants argue that “[i]t is respectfully submitted that determining updated portions of data at a main computer that are different than data stored at a remote computer [in Hill] is not the same as determining whether new or updated data has been received at a computer.” (Appeal Br. 17.) However, claim 18 only requires, in pertinent part, that the network host computer determines whether the first merchant computer or said second merchant computer has transmitted updates to the product information in the database related to the search parameter in the search request for product information.

We find that Hill transmits data from the host computer only after a determination is made as to the status of information in the database of the main computer (FF 8). Thus, we conclude that the requirement of determining whether new or updated data is received by a computer is met by Hill.

Appellants further argue that “[t]here are no data comparisons between the customer and host computers and data transmissions do not occur only when differences between data at the customer and host

computers are detected. (Appeal Br. 18.) While data transmissions contingent on a determination of updated data may not be part of the disclosure in Hill, we consider it to be a matter of common sense that requested information not be transmitted to the requester until it is determined that the information is valid e.g., current. The application of common sense is relevant in determining whether to combine teachings of references. *See KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 1742 (2007).

Finally Appellants argue:

because Hill teaches minimizing a customer's on-line time and synchronizing data between computers only when the user at a remote computer selects a product, it would not be obvious to one of ordinary skill in the art to combine the Hill reference with any reference that teaches frequent exchanges of information between computers.

(Appeal Br. 19.) However, to the extent that Appellants' claims recite continuous updates to the customer computer contingent upon the data being determined as updated, the modification to Suzuki is proper under 35 U.S.C. § 103(a) because simply checking, e.g., a time stamp on the real time sales data collected by the host computer in Suzuki to verify that is current would not destroy, but in fact enhance the quality of information being transmitted in Suzuki.

Appellants arguments to the inability of Hill to effectively modify Shavit (Appeal Br. 19) are misdirected because it is Suzuki and not Shavit which is the reference being modified.

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CONCLUSIONS OF LAW

We affirm the rejection of claims 1-9, 11, and 13-26.

DECISION

The decision of the Examiner to reject claims 1-9, 11, and 13-26 is
AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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